

BASS ENTERPRISES PRODUCTION CO.

IBLA 79-446

Decided May 27, 1980

Consolidated appeals from decisions of the Director, Geological Survey, affirming Area Oil and Gas Supervisor's refusal to approve applications for oil and gas drilling permits within a potash enclave in designated potash area for oil and gas leases LC 065431 and LC 065897-A (GS-128, 129-O&G).

Affirmed

1. Administrative Authority -- Appeals -- Rules of Practice: Appeals: Generally -- Secretary of the Interior

The validity or legality of regulations, orders, or policies formulated by the Secretary of the Interior are not issues within the appellate jurisdiction of the Board of Land Appeals. However, the Board may review decisions of the Geological Survey or the Bureau of Land Management to determine whether such Secretarial regulations orders or policies have been correctly implemented.

2. Applications and Entries -- Minerals Exploration -- Multiple Mineral Development Act -- Oil and Gas Leases: Drilling

An application for permit to drill for oil and gas in a "potash enclave" in a designated "Potash Area" is properly denied where the applicant fails to show that its application comes within either of the two exceptions to the policy in favor of potash development enunciated in an order of the Secretary dated Oct. 7, 1975, 40 FR 51486 (Nov. 5, 1975).

APPEARANCES: K. Douglas Perrin, Esq., Roswell, New Mexico, for appellant Ann B. Vance, Esq., Office of the Solicitor, Department of the Interior, Washington, D.C., for the Geological Survey.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Bass Enterprises Production Company (Bass) appeals from two decisions of the Director, Geological Survey (GS), each dated April 18, 1979, (GS-128, 129-O&G) by which he affirmed the GS Southern Rocky Mountain Area Oil and Gas Supervisor's (the Area Supervisor's) refusal to approve Bass' application for certain oil and gas drilling permits. 1/ Because the appeals involve the same party and identical issues, they have been consolidated.

Bass applied to drill two proposed wells, the "Rhodke Federal No. 3" in the SE 1/4 NW 1/4 of sec. 27, T. 20 S., R. 31 E., New Mexico principal meridian, and the "Big Eddy Unit No. 52" in NE 1/4 SE 1/4 of the same section. On May 6, 1977, and December 11, 1978, respectively, the Area Supervisor separately rejected both of these applications for drilling permits for the reason that the drilling of these wells would result in the waste of potash deposits. In the latter decision, the Area Supervisor held additionally that drilling the well would constitute a hazard to future mining operations. Bass appealed the Area Supervisor's rejections of the applications to the Director, GS.

The Director's decisions held that the sites where Bass had applied to drill were in a "potash enclave" within the potash area designated by the Acting Secretary's order dated October 7, 1975, and published at 40 FR 51486 (Nov. 5, 1975), and that policy established in this order provided that these applications should accordingly be denied. This order provided in part as follows:

It will be departmental policy to deny approval of most applications for permits to drill oil and gas tests from surface locations within the potash enclaves established in accordance with Part D, item 1 hereof. Two exceptions to this policy will be permitted under the following conditions:

a. Drilling of vertical or directional holes will be allowed to take place from barren areas within the potash

1/ The Area Supervisor's decision of May 6, 1977, concerns the application to drill the Rhodke Federal No. 3 well in the SE 1/4 NW 1/4 of sec. 27 on lease LC 065431, which decision was affirmed by the Director, GS, in decision GS-129-O&G. The Area Supervisor's decision of December 11, 1978 concerns the application to drill the Big Eddy Unit No. 52 well in the NE 1/4 SE 1/4 of sec. 27 on lease LC 065897-A, which decision was affirmed in GS-128-O&G.

enclaves when the Area Mining Supervisor determines that such operations will not adversely affect active or planned mining operations in the immediate vicinity of the proposed drillsite.

b. Drilling of vertical or directional holes will be permitted to take place from a drilling island located within a potash enclave when: (1) there are no barren areas within the enclave or drilling is not permitted on the established barren area(s) within the enclave because of interference with mining operations; (2) the objective oil and gas formation beneath the lease cannot be reached by a well which is vertically or directionally drilled from any permitted location within the barren area(s); or, (3) in the opinion of the Area Oil and Gas Supervisor, the target formation beneath a remote interior lease cannot be reached by a well directionally drilled from a surface location outside the potash enclave. Under these circumstances, the Area Mining Supervisor will, in consultation with the Area Oil and Gas Supervisor, establish an island within the potash enclave from which the drilling of that well and subsequent wells will be permitted. The Area Mining Supervisor in establishing any such island will, consistent with the data supplied by the Area Oil and Gas Supervisor regarding present directional drilling capabilities, select a site which will minimize the loss of potash ore. No island will be established within one mile of any area where approved mining operations will be conducted within three years. To assist the Area Mining Supervisor in this regard, he may require affected potash mining operators to furnish a three-year mining plan.

Part C of Item 1 defines "potash enclaves" as "the presently unmined areas which are considered to contain a minable reserve in one or more zones, i.e., those areas (enclaves) where potash ore is known to exist in sufficient thickness and quality to be minable under present day technology and economics."

[1] The order in question was duly promulgated by the Secretary of the Interior. The validity or legality of regulations, orders, or policies formulated by the Secretary are not issues within the appellate jurisdiction of the Board of Land Appeals. Belco Petroleum Corp., 42 IBLA 150, 153 (1979); Woods Petroleum Corp., 12 IBLA 247 (1973); Marvin E. Weaster, 10 IBLA 227 (1973); see Kreuger v. Morton, 539 F.2d 235, 237 (D.C. Cir. 1976). However, the Board may review decisions of the Bureau of Land Management or Geological Survey to determine whether such Secretarial regulations, orders, or policies have been properly implemented. Ibid.

[2] The Secretarial order of October 7, 1975, set out above, clearly states that it is Departmental policy to deny approval of

applications to drill oil and gas tests from surface locations within "potash enclaves" in the designated potash area that is, areas where potash ore is known to exist in sufficient thickness and quality to be minable under present day technology and economics, subject to two specific exceptions. GS properly denies a permit to drill where the applicant for a permit to drill a well from within a potash enclave fails to show that its application comes within either of these exceptions. Belco Petroleum Corp., supra.

The Secretarial order expressly identifies all of T. 20 S., R. 31 E., where Bass' proposed sites are located, as being within the "Potash Area." It remains to determine whether the sites are also within a "potash enclave" therein.

The record contains a GS memorandum with supporting maps and tables based on drilling data from two other wells previously drilled in sec. 27 in close proximity to Bass' two proposed sites. This document supports the conclusion that these sites are located in an area meeting the criteria for a potash enclave, and Bass has shown nothing to the contrary.

Moreover, this information shows that the proposed sites are not "barren areas," so that Bass' application does not fall under the first exception to the Secretarial policy requiring denial of applications to drill oil and gas tests from surface location within potash enclaves. Nor does the second exception apply to these sites, as these applications are for permits to drill from previously unused sites, not from "drilling islands." 2/ Bass has not demonstrated otherwise.

Bass emphasizes that the New Mexico Oil Conservation Commission (NMOCC) convened a hearing on the question of whether to allow drilling at these sites and, following this hearing, issued an order and findings authorizing it to do so. While we regard the transcript of the proceedings before NMOCC and its findings as informative, we must note that the Department was not a party to the proceeding. Thus, the absence of testimony of record therein showing that there are commercial potash deposits, on which NMOCC relied in part, does not indicate that there are no such deposits there.

Moreover, the terms of the Secretarial order, by which we are bound, provide as follows:

The Department will cooperate with the New Mexico Oil Conservation Commission (NMOCC) in the implementation of

2/ The Director advised appellant in his decision that GS would grant an application to directionally drill to the target formation from an old well, which it would regard as a "drilling island," under the authority of this second exception.

that agency's rules and regulations. In that regard, the Federal potash lessees shall continue to have the right to protest to the NMOCC the drilling of a proposed oil and gas test on Federal lands provided that the location of said well is within the State of New Mexico's "Oil-Potash Area" as that Area is delineated by NMOCC Order 111, as amended. However, the Department will exercise its prerogative to make the final decision or whether to approve the drilling of any proposed well on a Federal oil and gas lease within the Potash Area. [Emphasis supplied.]

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

